what has sometimes been called "the agony of the moment" he swerved to the offside in order to avoid running down the motor-cyclist and probably injuring him fatally or very seriously. The trial judge was not wrong in accepting the evidence which afforded the only reasonable explanation of how the accident happened.

(d) A subsidiary point is that the position of the motor-cycle after the accident — close to the nearside and facing back in the direction from which it had come — is fully consistent with the assumption that the motor-cycle sustained the blow on the back wheel and back number-plate at a time when it was moving towards its nearside. That is the bus driver's version. The position of the motor-cycle after the accident is more difficult to reconcile with the motor-cyclist's version that the motor-cycle was, at the time when that blow was struck, stationary in the middle of the road, facing forwards, and slightly turned to the offside though with handlebars slightly turned to the nearside. There is no certainty but it seems likely that the motor-cycle if struck with that blow in that position would have been pushed forward in the centre of the road.

Their Lordships will accordingly allow the appeals in both actions, set aside the judgments of the Federal Court and restore the judgments of the trial judge.

The costs of the appellant, the Tay company, in the two appeals to the Federal Court and in the two present appeals must be paid by the respondent, the motor-cyclist. The sums which the Federal Court ordered to be paid by the appellant in respect of the costs incurred in the appeal to the Federal Court by the plaintiff and the first defendant in the second action must be paid by the respondent.

Appeals allowed

Solicitors: *Linklaters & Paines; Lipton & Jefferies*

SINGAPORE REPORTS

LEE CHOH PET & ORS. v. PUBLIC PROSECUTOR (No. 2)

[C.C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) March 2, 1972]

[Singapore — Criminal Appeal No. 11 of 1970]

Penal Code (Cap. 119, 1955 Ed.), ss. 34, 302, 364 and 386 — Common intention, murder, kidnapping for murder and extortion.

Criminal Law and Procedure — Charge — Extortion — What amounts to — Caution statements — Admissibility of — Judges' Rules — Compliance with — Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 121(5), Sch. E.

Evidence — Corroboration — Accomplice evidence.

The three appellants were tried by a court of two judges constituted under section 185 of the Criminal Procedure Code. They were tried on three charges and were found guilty and sentenced to death on the charges of abduction for murder, and murder, in furtherance of their common intention. The prosecution failed to make out a case on the third charge of abduction for ransom. However, the trial court found that a *prima facie* case of extortion was made out against the appellants and they were convicted on this charge but the sentence on this charge was suspended.

This was an appeal against their convictions and sentences.

The evidence led by the prosecution was that on the evening of May 24, 1968 at about 7.00 p.m., the deceased was taken in a car from the Rex Theatre, Singapore, to a dark side lane off Clementi Road. The deceased was seated in the front seat of the car. Apart from the driver, there were three other persons in the back seat. The deceased was attacked from behind with a weapon or weapons by one or more of the persons in the back seat of the car. After some time, his body was dumped into a sewerage manhole in Jurong.

The deceased's abductors then commenced negotiations for the payment of $20,000 from the father of the deceased for the promised release of the deceased, the father being unaware that his son had already been killed. This payment was made on June 5, 1968.

The second and third appellants were subsequently arrested and they made caution statements regarding the parts they played in the whole transaction. Their caution statements were held to be admissible in evidence.

At the trial of the three appellants, the driver of the car, although an accomplice, gave evidence for the prosecution. He identified the three appellants as the persons who were sitting in the rear seat of the car. He described in detail the attack on the deceased and how the deceased resisted and tried to escape.

Held: (1) the evidence on record did not support the charge of extortion. The sum of $20,000 was paid by the deceased's father to the kidnappers not because he was put in fear of grievous hurt being caused to his son but because he believed that his son would be released upon payment of the said sum. The inducement was the promised release of his son and not fear of the causing of grievous hurt. Therefore, the charge of extortion was groundless and the conviction of the three appellants on this charge must be quashed;

(2) in the circumstances of this case, having regard to the character of the assault on the deceased, the preparations that had been made for the assault and for the subsequent disposal of the body of the deceased, the injuries received by the deceased and the fact that none of the appellants intervened to stop the assault, the trial judges were justified in coming to the conclusion that there was a common intention amongst the three appellants, first, to abduct the deceased in order that he may be murdered and secondly, that in furtherance of their common intention, they had committed murder by causing the death of the deceased;

(3) as regards the question of corroboration, even without the evidence of the accomplice driver, the prosecution had adduced sufficient direct and circumstantial evidence for the trial judges to be satisfied beyond reasonable doubt that the death of the deceased was caused by the acts of the three appellants and the driver in circumstances which amounted to the offence of murder, read with section 34 of the Penal Code;

(4) the trial judges, on the evidence before them, did not exercise their discretion under section 121(5) of the Criminal Procedure Code wrongly or in any manner which was contrary to law, in admitting in evidence the cautioned statements made by the second and third appellants;

(5) therefore, the appeals of all the three appellants against their convictions under sections 364 and 302 of the Penal Code, failed, and must be accordingly dismissed.

Per Curiam: The essence of the offence of extortion as defined in section 386 of the Penal Code, is the putting of a person in fear of death or of grievous hurt being caused to him or to some other person. To sustain a conviction under this section, there must be evidence that the accused person made a threat to the complainant of death or of grievous hurt being caused to him or to any other person.

The law as regards corroboration, discussed.

[**Editorial Note:** See *Lee Choh Pet & Ors.* v. *Public Prosecutor* [1972] 1 M.L.J. 1, *supra,* where a preliminary point was raised on appeal as to whether a court of two judges hearing a capital offence charge, can substitute therefor a lesser one. The Court of Criminal Appeal dismissed the appeal on this point and proceeded to hear the merits of the case.]

Cases referred to:-

(1) *R.* v. *Baskerville* [1916] 2 K.B. 638.

(2) *Kee Ah Tee & Anor.* v. *Public Prosecutor* [1971] 2 M.L.J. 242.

COURT OF CRIMINAL APPEAL.

Leo Fernando for the first appellant.

Kirpal Singh for the second appellant.

M. Loganathan for the third appellant.

K. S. Rajah and *Glenn J. Knight* (Deputy Public Prosecutors) for the respondent.

Choor Singh J. (delivering judgment of the court): The three appellants were tried by a court of two judges of the High Court constituted under section 185 of the Criminal Procedure Code. There were three charges against each of the appellants alleging that they had in furtherance of their common intention:—

First, abducted one Ong Beang Leck at 7.30 p.m. on 24th May, 1968, with intent to hold him for ransom, an offence punishable under section 3 of the Punishment of Kidnapping Ordinance, 1961;

Secondly, that all three of them abducted the said Ong Beang Leck at the same time on the same date in order that the said Ong Beang Leck may be murdered, an offence punishable under section 364 of the Penal Code; and

Thirdly, that they had committed murder by causing the death of the said Ong Beang Leck, an offence punishable under section 302 of the Penal Code. The time alleged in the third charge was "some time between 7.30 p.m. and 12 midnight" on the same day, that is after they had abducted him.

All the three appellants claimed trial on all the three charges and the prosecution proceeded to call their evidence in support of the charges. At the close of the prosecution case, the court found that the prosecution had made out a case against all the three appellants on the second and third charges which if unrebutted would warrant their conviction; that the prosecution had failed to make out such a case against all three appellants on the first charge; and that a *prima facie* case of extortion in contravention of section 386 of the Penal Code had been made out against all of them.

The following charge was then read out and explained to all the appellants:—

"You are charged that you, between the 26th day of May, 1968 and the 5th day of June, 1968 together with two other persons, namely, Richard Lai Choon Seng and Chow Siew Cheong, alias Ah Cheong, in furtherance of the common intention of you all committed extortion by putting one Ong Yew Kee in fear of grievous hurt being caused to Ong Beang Leck, and thereby dishonestly induced the said Ong Yew Kee to deliver to you $20,000 an offence punishable under section 386 of the Penal Code (Chapter 119) read with section 34 of the said Code."

As all the three appellants claimed trial on this new charge, they were called upon to enter their defence on this charge as well as on the second and third charges. In view of the new charge they were given the usual facilities of recalling any witness who had already given evidence for the prosecution and there is no complaint at all in this respect. The trial proceeded and at its conclusion all three appellants were convicted on all three charges. They were sentenced to death on the charges of murder and kidnapping for murder and the sentence on the charge of extortion was suspended. They now appeal against their convictions and the sentences passed on them.

The evidence led by the prosecution was that on the evening of the 24th May 1968 at about 7.00 p.m. the deceased Ong Beang Leck was taken in a car from the Rex Theatre, Singapore, along Bukit Timah Road and thence into Clementi Road. The car was driven by a person named Richard Lai Choon Seng and the deceased sat in the front seat beside Richard. In the back seat of the car were three other persons. From Clementi Road the car turned into a side lane which was unlit. As the car travelled along this unlit road the deceased was attacked from behind with a weapon or weapons by one or more of the persons in the back seat of the car. The deceased resisted the attack and the car pulled up. The deceased opened the door of the car and ran out but he was chased and attacked again until he collapsed on the road. He was carried into the car which was then driven to a sewerage manhole in Jurong where the deceased's body was dumped into the manhole. The manhole cover which consisted of two heavy cement slabs was then replaced. The deceased's abductors then commenced negotiations with the father of the deceased who did not know that his son had been killed. These negotiations resulted in $20,000 being paid on the 5th June 1968 to the abductors for the promised release of the deceased.

On 11th June 1968 acting on information which they had received, the police arrested Richard and his arrest led to the arrest of the first appellant. On the morning of the 12th June 1968 the first appellant led the police to the manhole in which the deceased's body had been dumped. The body was recovered and found to be in an advanced state of decomposition. The deceased's identity card pre-

served in its laminated cover was found on the body. A number of other articles belonging to the deceased were also found in the manhole. The father of the deceased was able to identify the clothes found on the body as those which his son was wearing when he last saw him leaving their house at about 7 p.m. on the 24th May 1968. In the light of all this evidence there was no doubt at all that the decomposed body found in the manhole on the 12th June 1968 was the dead body of Ong Beang Leck.

The Government pathologist who performed the autopsy on the body of the deceased was able to establish two injuries which penetrated the bones of the skeleton, namely the pelvic bone and the 12th rib. He felt certain that there must have been a number of other injuries because he saw corresponding holes in the singlet and the shirt worn by the deceased. As most of the flesh on the body had been devoured by maggots these injuries could not be seen on the body. The pathologist expressed the opinion that the death of the deceased was caused by shock and haemorrhage from multiple injuries. He was also of the view that the major injury which penetrated the pelvic bone and enroute must have cut through the bladder and intestines, was sufficient in the ordinary course of nature to cause death if left unattended. The pathologist was quite sure that having regard to the tears he found in the clothing of the deceased and the visible bone injuries, weapons like a bearing scraper, screw driver, ice-pick or some such other weapons must have been used to inflict the injuries on the deceased.

On the 15th June 1968 the second appellant was arrested in Ipoh by the Malaysian police. On the same day the second appellant led the Malaysian police to a house in Pusing New Village which is 50 miles from Ipoh and in that house the Malaysian police arrested the third appellant. The next day an inspector of the Singapore Police Force went up to Ipoh and brought back the second and third appellants to Singapore.

At the trial of the three appellants Richard gave evidence for the prosecution.

He admitted that because of his financial difficulties he was induced by the first appellant to participate in a plan which in short was to kidnap the deceased and kill him and then to extract ransom from the deceased's father by promising him the release of his son. According to the plan the first appellant was to lure the deceased to Rex Theatre on the pretext that he was going to be introduced to a girl whom he could befriend. The first appellant and Richard were to hire a car which Richard would drive to Rex Theatre where they would pick up the deceased and take him for a ride. At the appointed time on receipt of a pre-arranged signal the first appellant and the second appellant would knock the victim on the head from behind and render him unconscious. Thereafter the car would be driven to the labourers' quarters in Jurong where the unconscious victim would be handed over to the second appellant and his friend or friends in order that he could be killed and the dead body dumped in a manhole. Richard's role in the whole affair was to end as soon as the unconscious victim was delivered at Jurong. He would then drive back alone in the car, leaving the first appellant and the second appellant to deal with the unconscious victim. Richard stated that he agreed to participate in this plan on the understanding that no killing was to take place in the car. He admitted that he knew that the victim would subsequently be killed and dumped into a manhole and explained that because he was desperately in need of funds he agreed to participate in the plan as he had been promised by the first appellant four to five thousand dollars if he would participate and keep the whole matter a secret.

Richard admitted that he drove the car which took the deceased from the Rex Theatre to the unlit road off Clementi Road where the deceased was attacked and killed. He identified the three appellants as the persons who were sitting in the rear seat of the car. He described in detail the attack on the deceased and how the deceased resisted and tried to escape. He described how the deceased was chased when he ran out of the car and how he was bundled into the rear seat of the car after he had collapsed on the road. The car was then driven to the manhole in which the body of the deceased was dumped. He also related the negotiations for ransom with the father of the deceased and how eventually a sum of $20,000 was paid for the promised release of the deceased.

According to Richard all the three persons in the rear seat of the car *i.e.* the three appellants, attacked the deceased. He stated that they were making thrusts at him with some longish and glittering objects in their hands. The deceased was endeavouring to ward off the thrusts with his right hand in which he held a hammer and with his left hand he was trying to snatch the weapons the three appellants were weilding against him. Richard stated that he told the deceased to run away from the car, which the deceased did. As the deceased opened the door of the car and ran out he saw the deceased covering his chest with both hands. He saw the first and third appellants chase the deceased. They were armed with longish and glittering objects. Richard stated that he tried to get out of the car but was prevented from doing so by the second appellant who told him that the matter had nothing to do with him. Richard claimed that there were further stabbings of the deceased by the first and third appellants whereupon the deceased collapsed on the road. Richard then drove the car to the spot where the deceased had fallen. The three appellants then carried the deceased and placed him in the rear seat of the car. The first appellant sat in the front seat. Richard drove the car to Jurong. On the way the first appellant told the second and third appellants to give the deceased a few more stabs and finish him off. Richard then heard some noise behind him and he presumed that further stabs were being administered to the deceased. After that he did not hear the deceased gasping for breath. Eventually the car reached a place where there were tall trees and he was direct-

ed by the third appellant to park near a manhole. With two manhole cover levers supplied by the first appellant, the second and third appellants opened the manhole by removing the two cement slabs over it. The deceased was then carried by the second and third appellants from the car and dumped into the manhole. They then replaced the two cement slabs over the manhole.

Richard stated that he then drove all the appellants by the same route till they reached the 7th milestone, Bukit Timah Road where he dropped off the second and third appellants. He then drove the car to No. 40 Johore Road, the residence of the first appellant. There he recovered certain articles from the car which he took upstairs to the room occupied by the first appellant. These were a heavy plastic bag covered by a newspaper, a short-sleeved shirt and a shoe. According to Richard the contents of the plastic bag were an iron pipe at one end of which was a bearing scraper and at the other end a pointed object like a screw driver. These were welded on to the iron pipe at both ends and this iron pipe could be pulled apart at the centre. The bearing scraper end was completely stained with blood. The iron pipe and the screw-driver end also had blood on them. The handle of another screw-driver and the handle of a manhole lever found in the bag were also bloodstained. The shirt belonging to the first appellant was also bloodstained. About half an hour later the second and third appellants arrived. Richard stated that he and the third appellant then washed the car to remove traces of blood. Later he and the first appellant went to Clifford Pier and got rid of the blood stained weapons and other incriminating articles by disposing them in the sea.

The prosecution tendered in evidence a cautioned statement made to the police by the second appellant. This statement was to the following effect:—

"On the 24th May 1968 at about 7 p.m. while the third appellant and I were waiting at the Rex Theatre infront of the lobby I saw the first appellant coming there in a small red car. I saw three persons in the car. The first appellant was seated in the back seat. Richard was driving the car and the deceased was sitting in the front seat next to him. The first appellant instructed us to get into the car. We got into the back seat. The first appellant was seated behind the deceased. I sat in the middle while the third appellant sat behind Richard. The first appellant introduced the deceased to us as Ah Leck. After we had all got into the car it drove off towards Jurong. I cannot remember the route taken. On arrival at a deserted road which had trees on both sides of it I saw the first appellant take up a hammer from the floorboard of the car and with it he struck the deceased on the head. I heard the deceased say something but I cannot remember what he said. I then saw the first appellant take up a bearing scraper from the floorboard of the car and with it he started stabbing the deceased all over his body. The deceased put up a violent struggle and the car started swaying from side to side. Richard then stopped the car. When the car stopped the deceased ran out pursued by the first appellant. Richard also got out of the car but I cannot remember whether he gave chase or not. While the deceased was running I saw the first appellant stabbing him. The deceased was then dragged back to the car by the first appellant with the help of Richard. Both of them pushed the deceased into the back seat where the third appellant and I were seated. We did not get out of the car. The first appellant sat in the front seat of the car. By this time I saw that the deceased had died. The car was then driven to Jurong. It pulled up on a deserted road where there was a big tank on top of a hill. On the opposite side was an uncompleted power station. The car was parked beside a manhole and the first appellant and Richard got out of the car and went to this manhole. Both of them opened the manhole by removing its cover and all of us helped to carry the deceased's body which we dumped into the manhole. The first appellant and Richard put back the cover on the manhole and all of us then left in the same car. We proceeded to the first appellant's house in Johore Road."

When a charge of murder was read out and explained to the second appellant and he was cautioned, he said in answer to the charge, "I did not physically murder him."

The third appellant also made a cautioned statement to the police on the 22nd October 1968 which was to the following effect: —

"About two to three weeks before the 24th May 1968 the first appellant and Richard came to see me at my work site in Jurong. They invited me to go to a coffee shop as they wished to talk to me. At the coffee shop the first appellant requested me to join them in kidnapping his employer's son. I told the first appellant that I did not wish to join them as I was frightened. He told me that since I knew about their intention I must joint them and he insisted that I should do so. I then agreed to join them. The first appellant told me to meet him at his house the next day to discuss the matter further. I went to his house the next day. I met the first appellant and Richard. The first appellant told me that from that day onwards I should not come to his house often. He instructed me to look for the second appellant. He told me further that the second appellant and I should wait for him every evening between 7 p.m. and 8 p.m. at the Rex Theatre and that he would meet us there one day. I then left his house. As planned the second appellant and I waited every evening at the Rex Theatre for the first appellant but he did not turn up until the 24th of May 1968.

On the 24th of May 1968 at about 7 p.m. while the second appellant and I were waiting at the Rex Theatre infront of the lobby I saw the first appellant approaching us in a small red car. In the car I saw the first appellant seated at the back seat. Richard was driving the car and the deceased was in the front seat beside Richard. The car stopped infront of us and the first appellant told us to get into the car. Both of us sat in the back seat. I sat behind Richard while the second appellant sat in the middle and the first appellant sat behind the deceased. Richard then drove off. After about 15 minutes we were travelling along a deserted road with trees on both sides. I do not know the name of the road. I saw the first appellant taking out something and with that he hit the deceased. The first appellant missed his target and the head of the instrument came off. I then realised that the instrument was a hammer. The deceased then turned round and questioned the first appellant as to why he wanted to assault him.

Richard told the deceased that the first appellant must be drunk. I then saw the first appellant stand up with something in his hand. He was holding the instrument in his right hand and with his left he held the deceased by the neck. The first appellant then stabbed the deceased in the region of the chest. The deceased struggled and the first appellant called out to us to catch hold of him. The car was then swinging from one side to the other and Richard stopped the car. Just before the car stopped I saw the first appellant stab the deceased. I cannot say how many times the deceased was stabbed. I could not see what instrument the first appellant was holding as it was very dark. When the car stopped the deceased ran out and the first appellant chased after him. The second appellant and I remained in the car. Richard got out of the car but did not give chase. The deceased had run only a short distance when the first appellant caught up with him. I was unable to see whether the first appellant continued stabbing him. The first appellant then dragged the deceased back to the car. Richard helped the first appellant to put the deceased in the back seat of the car. I saw that the deceased in the back seat of the car. I saw that the deceased was motionless. The first appellant now sat in the front seat beside the driver. Richard then drove the car to Jurong. At a deserted road in Jurong, Richard stopped the car. Richard and the first

appellant got out of the car and the first appellant told the second appellant and I to push the deceased out of the car. I then saw the first appellant and Richard going to the manhole and removing the manhole cover. The first appellant told us to help him carry the body to the manhole. The second appellant and I refused and so the first appellant and Richard dragged the body and dumped it into the manhole and both of them then replaced the manhole cover. The car was then driven back to the first appellant's house at Johore Road."

Both cautioned statements were retracted at the trial and their admission in evidence was contested. A trial within a trial took place on the issue of the admissibility of both statements and at its conclusion the trial court decided to admit the statements in evidence as the trial judges were satisfied that the statements were voluntarily made and were substantially in accordance with the Judges' Rules.

The owner of the car in which the deceased was attacked and killed gave evidence before the trial court. He testified that the first appellant was carrying a parcel wrapped in paper when he came to hire the car. The parcel was under his armpit and it appeared to be bulky. He hired a Mini Minor car to Richard and the first appellant at about 7 p.m. on the night of the 24th May 1968. Richard drove away the car. At 12.50 a.m. on the same night the car was returned to him by Richard and the first appellant. He noticed at that time that the first appellant's leg was injured and was bleeding. His trousers were bloodstained. He questioned the first appellant who told him that he had fallen into a drain at Bedok. He also noticed bloodstains on the seat where the first appellant had been sitting. Later he hired the car to a customer named Ng Cheong Hin. When Ng returned the car he told the witness that his car "smelled of a dead rat." He then removed the seats and made a thorough examination and found blood clots underneath the seats. He also found spots of blood on the inside back portion of the car and on the near-side window glass and the rear window glass. There was also a tear in the ceiling fabric of the car.

The first appellant's brother, Lee Choh Hock, aged 17 years gave evidence for the prosecution. He stated that at the material time he was staying with the first appellant at No. 40 Johore Road, Singapore. On the evening of the 24th May 1968 he went to see a 9 o'clock show. When he returned home at about 11 p.m. he found four persons in his house. They were the first appellant, the second appellant, the third appellant and Richard. All of them were talking. When he entered the room Richard asked him to fetch a pail of water which he did. Richard took the pail of water downstairs and requested him to fetch a piece of cloth. When he took the piece of cloth downstairs he found Richard on the roadside washing a red motorcar. The third appellant was helping him to wash the car. After handing the piece of cloth to Richard he went back to his room. He saw the second appellant and his brother in the room. The second appellant was sitting next to his brother. He saw blood on his brother's leg. The second appellant requested him to go downstairs and borrow medicine from a neighbour named Ah Soh. He did as requested and brought the medicine to the second appellant. The second appellant applied the medicine to the first appellant's leg. The second appellant told him that his brother had fallen down and injured his leg. Richard then came up with a piece of rubber mat and asked him to wash it because it was stained with blood. He washed the bloodstains from the rubber mat and put it on a chair. Richard then took it downstairs. After that he slept. On the 5th or 6th of June 1968 at about 5 or 6 p.m. a number of persons came to his house. Among them were Richard, his brother the first appellant, the second appellant and the third appellant. There was also a fat person who was carrying something. Subsequently he saw that what the fat man had been carrying was money. He saw the money neatly stacked up on the table. He then left the room. Later, the same day his brother the first appellant, gave him a parcel containing money. It was wrapped up in a piece of paper and he was instructed to take it to their mother in Kulai. He did so and told her that the money was from his brother the first appellant who had asked him to deliver it to her for safe keeping.

The first appellant's mother, Goh Sui Hong, gave evidence for the prosecution. She stated that on or about the 5th June 1968 her son Lee Choh Hock came to see her in Kulai where she lived. He brought some money to her and requested her to keep it. Lee Choh Hock told her that his elder brother the first appellant had requested him to deliver the money to her. She kept it in a tin. A few days later the first appellant came to visit her. She asked him from where he got so much money. He replied that it was "the money of injustice." When she asked him what he meant by "money of injustice" he stated that somebody murdered someone else and that the money had been forced on him. She also noticed that the first appellant was shedding tears whereupon she refrained from questioning him any further but she did ask him who was killed and he replied that it was a fellow worker. She stated that on the 13th June 1968 some police officers came to her house and she handed the money to them.

Ong Yew Kee, the father of the deceased, gave evidence for the prosecution. He related that the last time he saw his son alive was on the 24th May 1968 at 7 p.m. when he saw his son leaving home. His son did not return home that night nor on the next day. On the 26th May he received a telephone call informing him that his son had been kidnapped and that he would be released on payment of a ransom of $100,000. From that day onwards he received several telephone calls everyday and eventually on the 5th June the kidnappers agreed to release his son on payment of $20,000 which was paid in accordance with instructions given by the kidnappers but his son failed to turn up. On the 12th June 1968 he was requested by the police to proceed to the General Hospital mortuary and there he saw the decomposed body of his son which he identified by the clothes on the body.

The evidence on record does not, in our opinion, support the charge of extortion which the trial court framed against the appellants at the close of the prosecution case. We have scrutinised the evidence of Ong Yew Kee with care and we find that there is not a single word in his evidence to the effect that he was at any time put in fear of death or grievous hurt being caused to his son by the kidnappers. The essence of the offence of extortion as defined in section 386 of the Penal Code is the putting of a person in fear of death or of grievous hurt being caused to him or to some other person. To sustain a conviction under this section there must be evidence that the accused person made a threat to the complainant of death or of grievous hurt being caused to him or to any other person. The charge framed by the trial court at the close of the prosecution case states that the appellants together with two other persons in furtherance of the common intention of all of them "committed extortion by putting one Ong Yew Kee in fear of grievous hurt being caused to Ong Beang Leck." The evidence of Ong Yew Kee does not support this charge. According to him all that he was told by the kidnappers on the telephone was that his son would not be released unless ransom money was paid. He does not say that he was put in fear of grievous hurt being caused to his son. The information given by the kidnappers to the father of the deceased that his son would not be released unless ransom money was paid, however alarming it may have been to him, did not constitute an offence under section 386 of the Penal Code. The sum of $20,000 was paid by the father of the deceased to the kidnappers not because he was put in fear of grievous hurt being caused to his son but because he believed that his son would be released upon payment of the said sum. The inducement was the promised release of his son and not fear of the causing of grievous hurt. Under the circumstances we hold that the charge of extortion in contravention of section 386 of the Penal Code is groundless and the conviction of the three appellants on this charge is accordingly quashed.

As regards the other two charges on which all the three appellants were convicted, namely, abduction in contravention of section 364 of the Penal Code and murder in contravention of section 302 of the Penal Code, we are of the opinion that there was ample evidence to support the trial judges' finding that the prosecution had made out a case against all the three appellants which if unrebutted would have warranted their conviction on both of these charges. Our opinion is based not merely on the evidence of Richard but on all the evidence considered as a whole which the prosecution tendered in support of their case. In so far as the second and third appellants are concerned, they admitted in the cautioned statements which they made to the police that they were in the back seat of the car when the deceased, who was seated in the front seat, was attacked and killed. And as regards the first appellant, there was ample evidence before the trial court to warrant the inference that he was also in the rear seat of the car when the attack on the deceased took place. In fact the first appellant did not dispute it.

It will be seen that even without the evidence of the accomplice, Richard, the prosecution had adduced sufficient direct and circumstantial evidence for the trial judges, at the close of the prosecution case, to be satisfied beyond a reasonable doubt that the death of the deceased was caused by the acts of the three appellants and Richard in circumstances which amounted to the offence of murder read with section 34 of the Penal Code. The three appellants were in the back seat of the car when the deceased who was sitting in the front seat was attacked mercilessly from behind and killed. Weapons for attacking the deceased were carried in the car. The appellants knew that these were necessary to carry out their planned object. Manhole cover levers were also carried in the car. These were necessary to lift the heavy cover of the manhole in which the body of the deceased was to be dumped after he had been killed. There were a number of injuries on the deceased and they were caused by more than one weapon and could not have been inflicted by one assailant only. The pathologist had testified that in his opinion weapons such as a bearing scraper, a screw-driver and perhaps an ice-pick must have been used. The first appellant led the police to the manhole in which the body of the deceased was found. The police found a manhole cover lever near the manhole. Having regard to the character of the assault on the deceased, the preparations that had been made for the assault and for the subsequent disposal of the body of the deceased, the injuries received by the deceased and the fact that none of the appellants intervened to stop the assault on the deceased, the trial judges, in our opinion, were justified in coming to the conclusion that there was a common intention amongst the three appellants, first, to abduct the deceased in order that he may be murdered and secondly, that in furtherance of their common intention, they had committed murder by causing the death of the deceased. The trial judges were therefore justified in calling upon the appellants to enter their defence on the two charges on which they were convicted and sentenced to death.

The first appellant gave evidence on oath. He admitted that he had conspired with Richard and the second appellant to kidnap the deceased. He admitted that he was in the back seat of the car with the second appellant and the third appellant when the deceased was attacked. His version of the attack on the deceased was as follows. The third appellant took out something and hit the deceased on his head with it. The third appellant then continued to stab the deceased on his chest after the latter had turned round to face the rear of the car. He intervened and tried to prevent the third appellant from further stabbing the deceased and in the process he sustained an injury on his right knee from a bearing scraper and another injury on his index finger when he brought his left hand down to cover the stab wound. The third appellant continued to stab the deceased who eventually got out of the car pursued by Richard and the third appellant. He and the second appellant remained in the car. After a while the second

appellant and he got out of the car and joined in the chase but he could not make any headway owing to the injury on his right knee. After a while Richard returned and they proceeded in the car to where the second appellant and the third appellant were standing. They stopped the car there and he saw the deceased lying by the side of the road. The second and the third appellants carried the deceased and put him in the rear seat. They then drove to Jurong. They came to a manhole. All of them got out of the car. The third appellant took out two manhole cover levers from his plastic bag and gave one of them to the second appellant. The second and third appellants removed the cement slabs which covered the manhole. The second and third appellants carried the body of the deceased and threw it into the manhole after which they replaced the cement slabs over the manhole. After this all of them got into the car and drove back to the city. The first appellant's defence was that although he had conspired with the second appellant and Richard to kidnap the deceased for ransom money he was not a party to the killing of the deceased. He stated that he was not aware that the second and third appellants, unknown to him, had agreed to kill the deceased. He stated further that the attack on the deceased by the third appellant came as a complete surprise to him.

The second appellant gave evidence on oath. His defence was an alibi. His evidence was as follows. On the day in question he commenced work at Wing Chan Engineering Company at 7.30 a.m. and continued working over-time till about 8 p.m. He then went home where he arrived at about 9 o'clock. At about 9.30 p.m. the third appellant paid him a visit and at 10 p.m. both of them went to see the first appellant at his house at No. 40 Johore Road. From there he returned home at 11 p.m. He denied that he was in the back seat of the car when the attack on the deceased took place. He admitted making the cautioned statement to the police but maintained that only those portions of the statement which tallied with his evidence given in court were true and that the rest of the statement was untrue. The personnel and payroll officer of Wing Chan Engineering Company, a Miss Choy gave evidence on behalf of the second appellant. She stated that according to her records the second appellant worked till 8.30 p.m. on the 24th May 1968. She admitted however that she returned home daily between 4.30 p.m. and 5 p.m. and did not see the workmen leaving for home and hence could not say whether the second appellant did in fact work till 8.30 p.m. on the day in question. She claimed that she was informed the next morning by the foreman that the second appellant had worked till 8.30 p.m. and accordingly she entered this in her records. The foreman also gave evidence on behalf of the second appellant but he could not confirm having seen the second appellant working till 8.30 p.m. on the night of the 24th May 1968.

The second appellant's younger brother gave evidence to the effect that the second appellant was working with him till 8.30 p.m. on the night of the 24th May 1968. The second appellant's brother-in-law also gave evidence on behalf of the second appellant. He stated that the second appellant came home from work at 9 p.m. on the night of the 24th May and that he had opened the door for him. He stated further that the third appellant came to see the second appellant at 9.30 p.m. and that at 10 p.m. both of them went out. He saw the second appellant returning home at 11 p.m.

The third appellant gave evidence on oath. He admitted that he was in the rear seat of the car when the attack on the deceased took place. He stated that it was the first appellant who hit the deceased over the head and was subsequently involved in a violent struggle with the deceased around whose neck the first appellant placed his arm in an arm-lock and then proceeded to stab him. Subsequently it was the first appellant and Richard who played a major part in placing the deceased in the car and later in dumping him in the manhole. The third appellant said that the first appellant was the first and the only person whom he saw attack the deceased. The third appellant admitted in evidence that on the instructions of the first appellant he went with the second appellant to Wong Kiong Bar in Middle Road on the evening of the 3rd June 1968 to collect the ransom money but without success. He also admitted having tried to collect the ransom money at Jurong and other places earlier.

The trial judges rejected the evidence of all the three appellants. They rejected as untruthful the account of the first appellant as to how the deceased received his injuries and also his claim that the attack on the deceased came as a complete surprise to him. They disbelieved the alibi of the second appellant. They also disbelieved the evidence of the third appellant that the first appellant was the only person who assaulted the deceased. They found as a fact that all the three appellants were in the back seat of the car when the deceased who was in the front seat was attacked from behind with weapons and killed. They also found as a fact that the three appellants in furtherance of their common intention had by deceitful means induced the deceased to get into the car in order that he may be taken to a lonely spot and murdered. They were satisfied that the three appellants had the common intention to murder the deceased and dump him in a sewerage manhole and in order to carry out this common intention the three appellants had with them in the rear seat of the car weapons with which the deceased was to be attacked and sewerage manhole cover levers for removing the covers of the manhole in which the body of the deceased was to be disposed of. They were further satisfied that the injuries inflicted on the deceased in furtherance of the common intention of the three appellants, having regard to the character of the assault on the deceased, were inflicted with the intention of causing his death.

It was argued on behalf of the appellants that there was insufficient evidence to prove beyond a reasonable doubt that the criminal acts which resulted in the death of the deceased were committed in

furtherance of a prearranged plan to carry out those criminal acts. In our opinion this ground is without substance The trial judges found on the evidence that all the three appellants were in the back seat of the car; that weapons with which the deceased was to be attacked and killed were carried on the floorboard of the rear compartment of the car; and that levers for lifting the heavy covers of the sewerage manhole in which the deceased's body was to be dumped were also carried in the car. These facts coupled with the character of the assault on the deceased and the number and extent of the injuries which were inflicted on him with the weapons available in the car constituted in our view sufficient evidence on which the trial judges could properly find, as they did, that the three appellants had the common intention to abduct the deceased in order that he may be murdered and the common intention to murder him .

It was argued that the trial judges failed to warn themselves of the danger of acting on the evidence of the accomplice Richard which was uncorroborated. In our opinion this argument is without any substance. Without the evidence of Richard there was sufficient direct and circumstantial evidence for the trial judges to be satisfied beyond a reasonable doubt that the death of the deceased was caused by the acts of the appellants in circumstances which amount to murder read with section 34 of the Penal Code. The first appellant admitted he was in the rear seat of the car when the deceased who was in the front seat was attacked and killed. The second appellant admitted in his cautioned statement to the police that he was also in the rear seat of the car when the deceased was assaulted and killed. The third appellant admitted in his evidence that he was also in the rear seat of the car at the material time. It was never in dispute that a number of weapons were carried in the rear compartment of the car and that they were used in the assault on the deceased. It was also not in dispute that sewerage manhole cover levers were carried in the car. The police recovered one of these at the site of the manhole from which the body of the deceased was recovered. This evidence and the character of the assault on the deceased, the number of weapons used in the attack on him, the number and nature of the injuries inflicted on him, all these are findings and conclusions which could be justifiably arrived at without taking into consideration the evidence of the accomplice Richard.

The trial judges were fully aware of the danger of acting on the uncorroborated evidence of an accomplice. The law as regards corroboration is well settled since *R.* v. *Baskerville.*[1] In the recent case of *Kee Ah Tee & Anor.* v. *Public Prosecutor,*[2] this court had occasion to refer to a passage from the judgment of Lord Reading C.J. who delivered the judgment of the Court of Criminal Appeal in *Baskerville's* case. That passage which defines corroboration is as follows: —

"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. ..... corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime."

It is true that the trial judges refer to certain pieces of evidence as corroborating the evidence of Richard when in fact that evidence does not constitute corroboration as defined in *Baskerville's* case. But the trial judges have made it quite clear in their grounds of judgment that even if that evidence did not constitute corroboration, they were prepared to accept the evidence of Richard because they were convinced that he was speaking the truth. The trial judges state, at page 1855 of their judgment: —

".... even if for some reason the items of corroboration which we have set out with regard to the first accused are not considered sufficiently adequate, we nevertheless warned ourselves as indeed we did in the case of the second and the third accused as well of the dangers of acting on the evidence of a person like Richard and we had no hesitation in acting upon his evidence. He struck us as being a truthful witness notwithstanding the role he played in the whole affair. He was completely unshaken on the substantial issues. He also struck us as being truly repentent and anxious to tell the truth. He knew that he had done wrong and he admitted that he was induced to take part in this affair because he was greedy. He was in the witness-box for six whole days and he came out of a long and severe cross-examination practically unscathed. He was really a splendid witness however despicable his conduct was in allowing himself to get mixed up in this affair.... We were conscious throughout that he had a strong motive for minimising his own part in the whole business.... Bearing all these factors in mind, we nevertheless considered that his evidence was reliable and so sufficiently convincing that we could act upon it."

The trial judges were aware that Richard was an accomplice. They were also aware that it is dangerous to act upon the uncorroborated evidence of an accomplice. However, they were so convinced that Richard was speaking the truth that they were prepared to act on his evidence even though it was uncorroborated. The passage cited from their judgment clearly shows that they had the risk in mind. Under the circumstances the submission that the trial judges failed to clearly warn themselves of the danger of acting on the uncorroborated evidence of Richard is without substance.

It was submitted on behalf of the second and third appellants that the statements made by these two appellants to the police should not have been admitted in evidence by the trial judges. The substance of the arguments on behalf of both appellants was that having regard to the evidence before the trial judges at the trial within a trial they ought to have refused to admit these statements in evidence on the grounds set out in the proviso to section 121(5) of the Criminal Procedure Code which reads thus:—

"Provided that the court may in its discretion refuse to admit such statement or allow it to be used as aforesaid —

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that

by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(b) in the case of a statement made by such person after his arrest if it appears to the court that the statement was not made and recorded substantially in compliance with the provisions of the rules set out in Schedule E to this Code."

We are not pursuaded that the trial judges on the evidence before them exercised their discretion wrongly or in any manner which was contrary to law. The issue as to admissibility was fully canvassed before them at the trial within a trial which lasted several days. In those circumstances this court as an appellate tribunal, not having the benefit of seeing and hearing the witnesses called to testify on this issue, is precluded from interfering with the trial court's exercise of its discretionary powers, unless convinced that there was no proper or sufficient evidence to support the trial court's decision or unless it is satisfied that the trial court acted on wrong principles.

The appeals of all the three appellants against their convictions under sections 364 and 302 of the Penal Code fail and are accordingly dismissed. Their conviction under section 386 of the Penal Code is quashed.

Appeals against convictions under sections 364 and 302 dismissed. Conviction under section 386 quashed.

Solicitors: *Ironside & de Souza; Mallal & Namazie; Loganathan & Co.*

MEASOR & ANOR. v. PUBLIC PROSECUTOR

[O.Cr.J. (Choor Singh J.) March 3, 1972]

[Singapore — Criminal Motion No. 9 of 1972]

Criminal Law and Procedure — Transfer of cases — Powers of High Court — Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 177(1) (b) and (e).

This was an application to transfer three arrest cases and five summons cases from the First District Court to the High Court.

The application was made on two grounds: (a) that questions of law of unusual difficulty were likely to arise in those proceedings before the First District Court, and (b) that the transfer of the case to the High Court was "expedient for the ends of justice".

Held, dismissing the application: the High Court will not hesitate to transfer a criminal case from a lower court to itself where there are good grounds for doing so. In this application there was no compelling ground for making the order.

Per Choor Singh J.: "It is the duty of the High Court to create and maintain confidence in the administration of justice. Special facilities for a trial or trial by a special judge or a special court is apt or at least is capable of being used to destroy that confidence and except where the supreme needs of justice require it, the ordinary course of justice is best left untouched. On the other hand no person should be allowed to undergo a trial by a district judge or magistrate of whom he has reasonable apprehension of being biased but not because the judicial officer is in his opinion incompetent or incapable of properly performing his duty." (*Post* p. 196 C *I*)

Case referred to:-

(1) *T. T. Rajah* v. *R.* [1963] M.L.J. 231.

CRIMINAL MOTION.

J. Grimberg for the applicants.

A. W. Ghows (Solicitor-General) for the respondent.

Choor Singh J., (delivering oral judgment): This is an application to transfer three arrest cases and five summons cases from the First District Court to the High Court. The application is made on two grounds. The first ground is that questions of law of unusual difficulty are likely to arise in those proceedings before the First District Court. This ground is based on the provisions of section 177(1)(b) of the Criminal Procedure Code. When the Criminal Procedure Code was first enacted in 1873, magistrates' courts which were then known as police courts were presided over by officers who had no legal training nor any legal qualifications. Paragraph (b) of section 177(1) was in those days of considerable importance as it could be invoked by a party to the proceedings before a police court when some question of law of unusual difficulty was likely to arise. The position today is quite different. All subordinate courts in Singapore are presided over by officers who are legally qualified and in consequence paragraph (b) has lost its importance. For example, the officer who is now presiding over the First District Court is not only a barrister-at-law but also an advocate and solicitor of the Supreme Court of some 15 years standing.

Counsel for the applicants has made much of the fact that questions of law of unusual difficulty are likely to arise in the trial before the First District Court and that for that reason it is desirable that the trial should take place before the High Court. Since our Criminal Procedure Code allows an appeal and also a revision application in respect of any conviction by a district court, the High Court should in my opinion be loathe to transfer a case from a subordinate court to itself on the ground that difficult questions of law are likely to arise in the case. In the present case there appears to be some apprehension in the minds of the applicants that the First District Court may take an erroneous view of the law. Such apprehension is not supported by any evidence and is therefore groundless. Furthermore, the applicants can rest assured that if the First District Court errs on any point of law or makes some other mistake whether of law or of fact such mistake can be and will be put right by this court on appeal or revision.

Reference has been made to the case of *T. T. Rajah* v. *Regina*,[1] which in my opinion is of no help to the applicants because in that case the application was made on a number of grounds and at the hearing of the application for the transfer of the case to the High Court, the learned Solicitor-General who appeared for the respondent intimated to the court that the Crown would not oppose the application on the ground that a fair and impartial trial could not be had in any of the criminal district courts. In